

**STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES**

IN RE: GRAHAM/MASSEY
ANALYTICAL LABORATORY

AGREEMENT AND CONSENT ORDER

AGREEMENT

This agreement is entered into this ____ day of September 2002 by and among the State of Connecticut, acting through the Connecticut Department of Social Services (the “Department”) and Graham/Massey Analytical Laboratory, Inc. (“GMAL”) acting here and by Daniel Massey, President of GMAL, and Daniel Massey in his individual capacity, hereinafter collectively referred to as the “parties.”

WHEREAS, the Department is the single state agency responsible for administering the Medicaid program in the State of Connecticut pursuant to Conn. Gen. Stat. § 17b-2;

WHEREAS, GMAL previously contracted with the Department to be a provider of laboratory services participating in the Medicaid program, subject to all lawful requirements established by the Department in applicable statutes and regulations;

WHEREAS, the Department conducted an audit of all Medicaid claims submitted by GMAL and paid by the Department during the period July 1, 1998 to December 31, 2000;

WHEREAS the Department issued a draft audit report dated September 27, 2001 and issued on October 1, 2001, in which the Department took a number of audit exceptions to GMAL’s claims;

WHEREAS, GMAL disagrees with the audit exceptions;

WHEREAS, the Department conducted an exit conference on December 4, 2001, at which time GMAL presented its claims and defenses to the Department;

WHEREAS, the Department has extended the results of the audit through the period of December 31, 2001 and issued a final audit report dated September , 2002 (“Audit Report”);

WHEREAS the parties have agreed to resolve their dispute in a manner, which avoids further administrative or judicial actions;

WHEREAS, there are complex legal and factual questions involving GMAL’s challenges to the audit;

WHEREAS, it is expressly understood that the execution of this Agreement (“Agreement”), any provision of this Agreement and any statement or discussions leading to the execution of this Agreement, shall not constitute or be construed to constitute any admission or adjudication of any wrongdoing or violation of the Regulations of Connecticut State Agencies and/or the Connecticut General Statutes by GMAL, its directors, officers, agents, servants, employees or any other person or entity, specifically including Daniel Massey;

WHEREFORE, in consideration of the mutual covenants made herein, and in full and final settlement of the issues raised by GMAL, the parties agree that:

1. The Audit Report revealed that in the Department’s view money was due and owing to the State concerning the failure of GMAL to reduce the amount billed to the Department to the lowest amount billed to any other payor for the same or substantially similar services in accordance with § 17b-262-649 (a) of the Regulations of Connecticut State Agencies and for the appropriate way to bill for drug testing prior to the effective date of the above referenced regulation specifically in the Department’s view the five drugs being tested for had to

be billed as a panel. GMAL disputes the Department's position on both of these issues. These two issues are hereinafter sometimes referred to as the "Reimbursement Dispute".

2. In order to resolve the Reimbursement Dispute with the Department through the period ending December 31, 2001, GMAL agrees not to contest the \$1,100,000.00 amount set forth as owing in the Audit Report. However, it is agreed and understood the payment the Department has and will receive in consideration of this Agreement shall not be construed as an admission by GMAL of any wrongdoing or guilt. Without admitting any wrongdoing or guilt in past conduct, GMAL agrees to abide by all current and future billing and reporting requirements.

3. GMAL agrees to pay and the Department agrees to accept \$1,100,000 as payment in full for the period beginning July 1, 1998 and ending December 31, 2001. Payment shall be made in lawful United States currency in the form of a bank or certified check payable to the State of Connecticut, Department of Social Services, and shall be delivered to the Department of Social Services, Attn.: John F. McCormick, Accounting Manager, Medical Audits Unit, 25 Sigourney Street, 8th floor, Hartford, Connecticut 06106. The amount necessary to be paid in the check shall be reduced by \$119,184.54 and the amount recouped from GMAL by the Department of Mental Health and Addiction Services (DMHAS) which exceeds the \$1.1 million amount agreed to be paid to DMHAS by GMAL in their agreement of even date with this one. In determining the amount of the recoupment from GMAL by DMHAS, DSS agrees that if DMHAS rejects claims for payment from GMAL because the client was eligible for Title XIX, and GMAL submits the claim to DSS, DSS will not count the period of time the claim was held by DMHAS in determining whether the claim is timely filed. All other requirements for payment of claims remain unchanged. The bank check shall be paid by GMAL within five (5)

business days following notification in writing by DSS of the amount of the balance due and owing from GMAL after the determination of the reduction amount from DMHAS.

4. GMAL agrees to withdraw, with prejudice, any request for a hearing or other claim to challenge the Audit Report.

5. This Agreement and Consent Order contained herein shall constitute full and final settlement of all of GMAL's items of aggrievement with respect to the Audit Report. GMAL agrees that this agreement, once approved in writing by the Commissioner, shall relieve the Commissioner from all responsibility to render a final decision regarding said items of aggrievement, and that this Agreement shall be in lieu of a final decision on said items. Further, it is agreed that the Consent Order contained herein shall have the same force and effect of law as an Order entered into as a final decision after a final hearing with Findings of Fact and Conclusions of Law and that the Consent Order shall become final upon written acceptance and approval by the Commissioner. GMAL admits all requisite jurisdiction of the Commissioner to issue the Consent Order contained herein. Further, it is agreed that GMAL hereby waives all rights to seek judicial review or otherwise contest or challenge the validity of the Consent Order entered pursuant to this Agreement. The Consent Order contained herein shall be enforceable by the Department in the same manner in which a final decision of the commissioner is enforceable.

6. The parties agree that to the extent permitted by law, the amount due to the Department is non-dischargeable in bankruptcy, and further that the Department, by entering into this agreement, does not relinquish its right to raise issues of non-dischargeability in a subsequent bankruptcy filing by GMAL.

7. The parties agree that this Agreement does not constitute a final adverse action reportable to the Healthcare Integrity and Protection Data Bank ("HIPDB") and that neither the

Department nor the Office of the Attorney General shall use this Settlement Agreement as a basis for making a report to the HIPDB.

8. Upon receipt of full payment of the entire amount of the debt set forth in paragraph 2, the Department shall release and will be deemed to have released, GMAL, including GMAL's past and present directors, officers, and employees, partners, principals, shareholders, agents and Daniel Massey individually from any civil or administrative claims, actions, causes of action, or suits that the Department has or may have under state or federal law, based upon the disallowance and audit findings contained in the audit report, i.e. the Reimbursement Dispute. However, the Department reserves the right to make all future decisions concerning utilization of GMAL as a provider based upon the totality of the circumstances existing at that time, including but not limited to, the conduct identified in the Audit Report.

9. Upon the signing of this Agreement, GMAL and each of its past and present officers, directors, trustees, partners, principals, shareholders, employees, agents, and Daniel Massey individually, (the "Releasors"), hereby release and discharge the Department and each of its officials, employees, and agents (the "Releasees"), in their official and individual capacities from any and all claims, actions, causes of action or suits, arising under state law or federal law which against the Releasees, the Releasors have or may have, that arise out of, are based upon, directly or indirectly, acts or omissions of the Releasees in the course of the audit and the negotiation and conclusion of this Agreement and Consent Order concerning the Reimbursement Dispute.

10. This Agreement shall have no precedential effect whatsoever adverse to the Department, or GMAL and is based upon the unique set of circumstances surrounding this case.

11. All issues and potential disallowances which are not part of the Reimbursement Dispute, and all time periods subsequent to December 31, 2001, remain subject to all ordinary audit procedures in the ordinary course in accordance with the statutes and regulations and are not covered by the release set forth above in Paragraph 8.

12. This Agreement and the following Consent Order shall have no force and effect, nor shall they become a part of the official record, unless or until they are accepted in writing by the Commissioner, at which time they shall become final and effective without further notice to GMAL.

13. Each of the signatories represents that he has full power and authority to enter into this Agreement.

AGREEMENT

The provisions of the Agreement between GMAL and the State of Connecticut, Department of Social Services, set forth in paragraphs 1 through 13 above, are hereby incorporated by reference herein and accepted as an Order of this Department.

FOR GRAHAM/MASSEY ANALYTICAL LABORATORY, INC.

Date: _____

By: _____
Daniel Massey, President

Date: _____

By: _____
Daniel Massey, Individually

FOR THE STATE OF CONNECTICUT,
DEPARTMENT OF SOCIAL SERVICES

Date: _____

By: _____
Michael P. Starkowski
Deputy Commissioner

CONSENT ORDER

Accepted and approved and Consent Order entered by the Commissioner on the _____ day of _____, 2002.

Patricia A. Wilson-Coker
Commissioner
Department of Social Services

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